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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/655,074	09/05/2000	Michio Naka	10873.164 USC2	8424
23552	7590	10/21/2003	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			ALEXANDER, LYLE	
			ART UNIT	PAPER NUMBER

1743

DATE MAILED: 10/21/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/655,074

Applicant(s)

NAKA ET AL.

Examiner

Lyle A Alexander

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 7,9-18,28-33,38-44 and 46-76 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9,12-17,28-31,38-44,46-53,56-64,66-71 and 73-76 is/are rejected.
- 7) ☒ Claim(s) 7,10,11,18,32,33,54,55,65 and 72 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |                                                                                              |                                                                             |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:                                          |

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***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 50, 69-71, 74 and 76 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Davis or Ebersole.

See the appropriate paragraph of paper 15.

With respect to new claim 74 Davis bulb cavity (14) and Ebersole bulb (38) both of which have been read on this new claim. New claim 76 requires the analytical section be wider than the drawing channel and it to extend from the drawing channel to the suction pressure generator. Davis teaches the analytical portion (16) attached to backing sheet (11), which is wider than the drawing channel. Davis also teaches the analytical portion (16) extending through the cavity (13) to the bulb (14). Ebersole teach in figure 5 the analytical section (44,110,112) that has a width that is greater than the taper tip (42), which has been read on the drawing channel. Finally, the drawing channel comprises the combination of the tip (42) and tubular portion (40), which extends to the suction bulb (38).

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 51-53, 60-64 and 66-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis or Ebersole.

See the appropriate paragraph of paper 15.

Claims 9,12-17,28-31,38-44,46-49, 56-59, 73 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ebersole or Davis in view of Apicella.

See the appropriate paragraph of paper 15.

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New claims 73 and 75 require the suction generating means to be concave and extend to the analytical section. Davis teaches bulb (14) that is concave upon being pressed and extends to the analytical section (16). Similarly, Ebersole teaches bulb (38) is concave upon being squeezed and is in contact with the analytical section (44, 112,110).

### ***Allowable Subject Matter***

Claims 7,10,11,18,32,33,54,55,65 and 72 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments filed 8/18/03 have been fully considered but they are not persuasive.

Applicants state Davis fails to teach a suction generating chamber in the main body and an analytical section between the between the drawing channel and the pressure generator. The Office maintains Davis teaches bulb cavity (14) that has been read on the claimed suction pressure generator. The analytical section (16) is disposed between the opening (15) and bulb cavity (14).

Applicants state Ebersole does not teach a device dimensioned to be manipulated by hand. Ebersole clearly teaches manipulating upper chamber (38) by hand (see col. 9 lines 19+ for example), which has been properly read on the claimed limitations. Applicants state Ebersole is larger than the instant invention and "one piece

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construction". These remarks are not commensurate in scope with the pending claims because size and exclusion from multiple piece construction is not claimed.

Applicants traversed the 35 USC 103 rejections on basis that the 35 USC 102 rejection has been over come. The Office maintains both rejection are proper for the reasons above.

Applicants state the further modification of Ebersole or Davis in view of Apicella does not remedy the deficiencies with respect to claims 56-59. The outstanding rejection of these claims additionally cites In re Yount that teaches mere size is not a matter of invention. The Office maintains the rejections of record are proper.

Applicants traverse the rejection of claim 28 and all dependent claims over Ebersole or Davis in view of Apicella. The Office maintains the positions articulated above concerning Davis, Ebersole and Apicella.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 703-308-3893. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 703-308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.



Lyle A Alexander  
Primary Examiner  
Art Unit 1743

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